



November 27, 2001

Ms. Julie Reagan Watson  
Assistant General Counsel  
Texas Department of Human Services  
P.O. Box 149030  
Austin, Texas 78714-9030

OR2001-5474

Dear Ms. Watson:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 155272.

The Texas Department of Human Services (the "department") received a request for a copy of the completed investigation pertaining to Vitas Healthcare. You state that you have released some responsive information to the requestor. You claim, however, that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the submitted information.

Initially, we note that section 552.022 of the Government Code makes certain information public, unless it is expressly confidential under other law or is excepted from disclosure under section 552.108. *See* Gov't Code § 552.022(a). One category of public information under section 552.022 is "a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by [s]ection 552.108[.]" Gov't Code § 552.022(a)(1). The submitted information constitutes a completed investigation conducted by the department. You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code. Therefore, we will address your section 552.101 claim with regard to the submitted information.

You claim that the submitted information is excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 142.009(d) of the Health and Safety Code.<sup>1</sup> Section 142.009(d) provides:

The reports, records, and working papers used or developed in an investigation made under [Chapter 142] are confidential and may not be released or made public except:

- (1) to a state or federal agency;
- (2) to federal, state, or local law enforcement personnel;
- (3) with the consent of each person identified in the information released;
- (4) in civil or criminal litigation matters or licensing proceedings as otherwise allowed by law or judicial rule;
- (5) on a form developed by the department that identifies any deficiencies found without identifying a person, other than the home and community support services agency;
- (6) on a form required by a federal agency if:
  - (A) the information does not reveal the identity of an individual, including a patient or a physician or other medical practitioner;
  - (B) the service provider subject to the investigation had a reasonable opportunity to review the information and offer comments to be included with the information released or made public; and
  - (C) the release of the information complies with any other federal requirement; or
- (7) as provided by Section 142.0092.

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<sup>1</sup> Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses information protected by other statutes.

Health & Safety Code § 142.009(d). You state that the submitted information constitutes reports, records and working papers that were used or developed during an investigation that was conducted under section 142.009 of the Health and Safety Code. You also state that the HCFA 2567 form contemplated under section 142.009(d)(6) that was submitted to us as Attachment D is a draft document that was not submitted to the provider. Consequently, the provider could not have had a reasonable opportunity to review the draft or offer responsive comments. Therefore, we have no basis for concluding that any of the exceptions to confidentiality in section 142.009(d) apply to the submitted documents. *See* 42 C.F.R. §§ 401.126, .133; *see also* Open Records Decision No. 487 at 5 (1988); Health & Safety Code § 142.009(d)(6). Accordingly, we conclude that the department must withhold all of the submitted information from disclosure as confidential information pursuant to section 552.101 of the Government Code in conjunction with section 142.009(d) of the Health and Safety Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental

body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Ronald J. Bounds  
Assistant Attorney General  
Open Records Division

RJB/seg

Ref: ID# 155272

Enc. Submitted documents

cc: Ms. Berenice Kessler  
423 Campbell Court  
Richardson, Texas 75080  
(w/o enclosures)